

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.846 and 847 of 2007

Commissioner of Income-tax-I,
Chennai.

...Appellant in both
the T.C.(A)s.

Vs.

First Leasing Co. Of India Ltd.,
749, Mount Road,
Chennai-600 002.

..Respondent in both
the T.C.(A)s.

Appeals under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'B', Chennai in I.T.A. Nos.172 & 175(Mds)/98 dated 23.08.2004 for the assessment years 1992-93 and 1989-90. Against IT/WT/GT/Appeal Nos. ITA NO. 90/95-96 dated 05.12.1997 and 214/92-93 dated 27.11.1997 on the file of the Commissioner of Income Tax Appeals V Chennai against GI NOS. 4-F/92-93 P.A. NO. 47-055-CV-3961 dated 29.3.1995 and GI NO. 4-F/1989-90 PA NO. 47-05J-CV-3961 DATED 30.03.1992 on the file of the Deputy Commissioner of Income Tax Special Range VI Madras - 34 respectively

For Appellant : Mr.J.Narayanaswamy,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

These appeals are filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'B', Chennai in I.T.A. Nos.172 & 175 (Mds)/98 dated 23.08.2004 raising the following common substantial

question of law:-

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the expenses for the issue of debenture is allowable as a deduction in full in the light of section 35D of the Act."

The learned Standing Counsel appearing for the Revenue now stated that the real issue involved in the appeals is, whether the expenses incurred for the issue of debenture is revenue expenditure or not and hence, redrafted the question which reads as under:-

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the expenses for the issue of debenture is an allowable deduction as revenue expenditure?"

2. It is fairly stated that the issue stands covered in favour of the assessee, by this Court judgment in the case of Commissioner of Income-tax Vs. South India Corporation (Agencies) Limited [2007] 290 ITR 217 (Mad), wherein it was held as follows:-

"This question pertains to the assessment years 1989-90 and 1992-93. For the relevant assessment years, the assessee claimed certain expenditure as debenture issue expenses. The Assessing Officer treated 60 per cent of the claim of expenditure as capital expenditure and the balance 40 per cent as revenue expenditure. Aggrieved by the same, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) confirmed the order of the Assessing Officer and dismissed the appeal filed by the assessee. Aggrieved by the order, the assessee filed an appeal to the Income-tax Appellate Tribunal (hereinafter referred to as the "Tribunal"). The Tribunal held as follows:

"The last of the issues is with regard to expenses incurred on debenture issue being treated as capital expenditure. The authorities have treated part of the expenditure as capital expenditure on the reasoning that at the time of redemption of the debenture, the holders of the debentures were entitled to certain shares. The issue of shares is a future event which may or may not happen. At present, the expenditure incurred was on the issue of debentures only and hence the expenses incurred on obtaining a loan is a revenue expenditure. We accordingly uphold the claim of the assessee."

The Assessing Officer had bifurcated the expenditure and allowed only 40 per cent as revenue expenditure, without any basis. The Tribunal correctly held that the disallowance of 60 per cent is without any

basis and the Assessing Officer was wrong in treating part of the expenditure as capital expenditure on the reasoning that at the time of redemption of debentures, the holders of the debentures would be entitled to certain shares. The issue of shares is a future event which may or may not happen.

The Tribunal considered and followed the principles enunciated in the Apex Court judgment reported in India Cements Ltd. v. CIT [1966] 60 ITR 52, which, in fact, followed by the Delhi High Court in CIT v. Thirani Chemicals Ltd. [2007] 290 ITR 196 holding that expenditure incurred on the issue of debentures is a permissible deduction under Section 37 of the Act.

Learned counsel appearing for the Revenue has not produced any material or evidence to take a different view. The reasoning of the Tribunal was based on relevant materials and evidence and there is no error or infirmity in the order of the Tribunal to warrant interference. In view of the same, no substantial question of law arises for consideration by this Court and hence, the appeal in respect of question No.1 is dismissed."

3. Following the above principle, we are of the view that no substantial question of law arises for consideration of this Court and accordingly the tax cases are dismissed. Consequently, M.P.No.1 of 2007 in T.C.(A) No.847 of 2007 is closed. No costs.
km

Sd/
Asst.Registrar

/true copy/

सत्यमेव जयते

Sub Asst.Registrar

To

1. The Assistant Registrar,
Income-tax Appellate Tribunal, Chennai Bench 'B',
Chennai.
2. The Commissioner of Income-tax (Appeals) V,
Chennai.

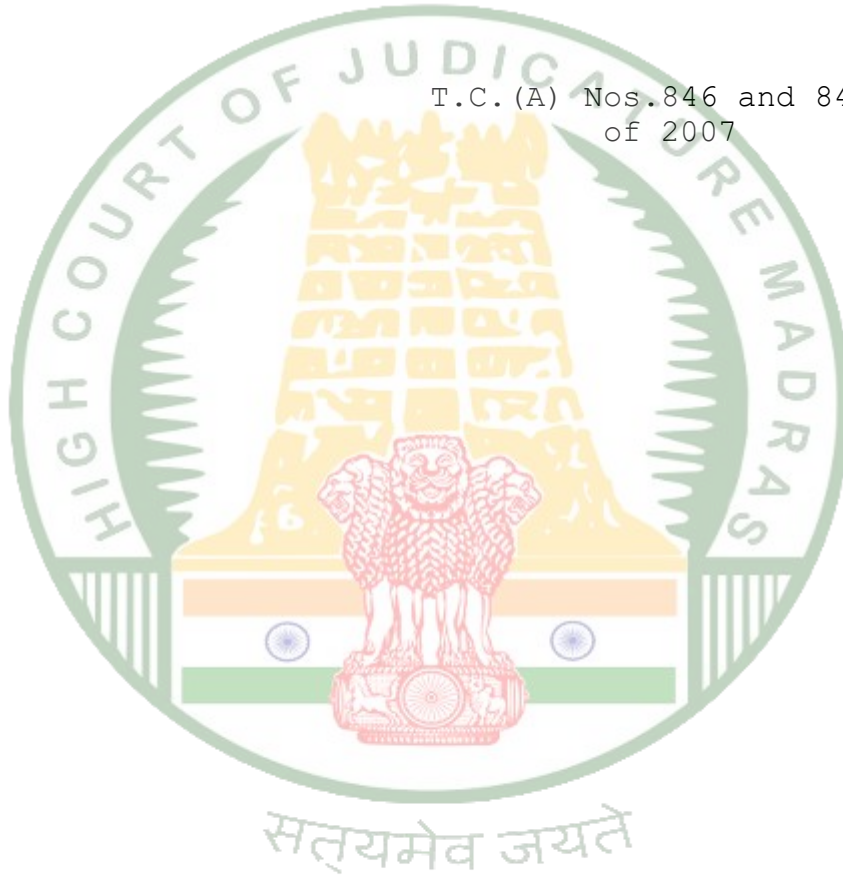
3. The Deputy Commissioner of Income-tax,
Spl.Range VI, Madras-34.

4. The Commissioner of Income Tax Chennai

+ one cc to Mrs. Pushya Sitaraman Senior Standing counsel for IT
Cases sr no. 39871

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nm(17.07.07)

T.C. (A) Nos.846 and 847
of 2007



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